

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

4 UNITED STATES OF AMERICA, )  
5 ) Case No. 1:18-CR-00140  
6 Plaintiff, ) (RJA) (HKS)  
7 )  
8 vs. ) November 15th, 2018  
9 )  
DANIEL VILLAFANE-LOZADA, )  
10 )  
Defendant. )

TRANSCRIPT OF PLEA  
BEFORE THE HONORABLE RICHARD J. ARCARA  
SENIOR UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: JAMES P. KENNEDY, JR., ESQ.  
UNITED STATES ATTORNEY  
BY: JEREMY MURRAY, ESQ.  
ASSISTANT UNITED STATES ATTORNEY  
138 Delaware Avenue  
Buffalo, NY 14202

For the Defendant: FEDERAL PUBLIC DEFENDER'S OFFICE  
BY: JEFFREY BAGLEY, ESQ.  
300 Pearl Street, Suite 200  
Buffalo, NY 14202

Court Reporter: MEGAN E. PELKA, RPR  
Robert H. Jackson Courthouse  
2 Niagara Square  
Buffalo, NY 14202

10:53AM 1 THE CLERK: Criminal action 2018-140A. United States  
10:53AM 2 vs. Daniel Villafane-Lozada. Plea. Counsel, please state  
10:53AM 3 your name and the party you represent for the record.

10:53AM 4 MR. MURRAY: Good morning, Your Honor. Jeremy Murray  
10:53AM 5 on behalf of the United States government.

10:53AM 6 MR. BAGLEY: Good morning again, Judge. Jeff Bagley  
10:53AM 7 for Mr. Villafane-Lozada.

10:53AM 8 THE COURT: Sorry we're running a little late. All  
10:53AM 9 right. Ready?

10:53AM 10 MR. MURRAY: Yes, Your Honor. We're here for  
10:53AM 11 purposes of a plea. It's my understanding that the defendant  
10:53AM 12 would like to plead guilty to Count 2 of the indictment  
10:53AM 13 charging him with one count of Title 18, United States Code,  
10:53AM 14 Sections 2252A(a)(5)(B) and 2252A(b)(2), possession of child  
10:53AM 15 pornography involving a prepubescent minor.

10:53AM 16 THE COURT: That's your understanding, Mr. Bagley?

10:53AM 17 MR. BAGLEY: Yes, Judge.

10:54AM 18 THE COURT: Would you please administer the oath to  
10:54AM 19 the defendant?

10:54AM 20 (The defendant was sworn 10:54 a.m.)

10:54AM 21 THE COURT: Sir, you're now under oath. And being  
10:54AM 22 under oath during the course of these proceedings, I'll be  
10:54AM 23 asking you a number of questions. You'll have to answer those  
10:54AM 24 questions honestly and truthfully. If you were to give me any  
10:54AM 25 false answer, that false answer may be used against you in a

10:54AM 1 further prosecution brought by the government on a charge of  
10:54AM 2 perjury or making a false statement while under oath. Do you  
10:54AM 3 understand that, sir?

10:54AM 4 THE DEFENDANT: Yes.

10:54AM 5 THE COURT: I can't hear you.

10:54AM 6 THE DEFENDANT: Yes.

10:54AM 7 THE COURT: It's also very important you understand  
10:54AM 8 what your rights are. If at any time during the course of  
10:54AM 9 these proceedings, there is something you don't understand,  
10:54AM 10 you want to ask me a question, you want to consult with your  
10:54AM 11 attorney, you want something more fully explained to you,  
10:54AM 12 you're free to do so. You're encouraged to do so. It's not  
10:54AM 13 important that we get this over with as quickly as possible.  
10:54AM 14 What's important is that I am satisfied that you fully  
10:54AM 15 understand what your rights are. Do you understand that?

10:55AM 16 THE DEFENDANT: Yes.

10:55AM 17 THE COURT: It's my understanding that you are here  
10:55AM 18 today to waive certain rights and to plead guilty to Count 2  
10:55AM 19 of the indictment under the terms and conditions of the plea  
10:55AM 20 agreement. Do you understand this charge, sir?

10:55AM 21 THE DEFENDANT: Yes.

10:55AM 22 THE COURT: Mr. Bagley, you have gone over Count 2  
10:55AM 23 with your client. Are you satisfied that he understands it?

10:55AM 24 MR. BAGLEY: Yes, Judge.

10:55AM 25 THE COURT: Any reason for me to go through any

10:55AM 1 further explanation?

10:55AM 2 MR. BAGLEY: No, Your Honor.

10:55AM 3 THE COURT: And you've reviewed with him the terms  
10:55AM 4 and conditions of the plea agreement and he understands them?

10:55AM 5 MR. BAGLEY: I have.

10:55AM 6 THE COURT: And his rights under Rule 11, right to a  
10:55AM 7 trial, et cetera?

10:55AM 8 MR. BAGLEY: Yes, Judge.

10:55AM 9 THE COURT: Now, sir, you have discussed this whole  
10:55AM 10 matter with your lawyer. He explained to you what your legal  
10:55AM 11 rights are and what your legal options are. You probably  
10:55AM 12 didn't like to hear what he had to tell you, but he's not  
10:55AM 13 there to make you feel good. He's there to be your counsel.

10:55AM 14 And apparently, based on those discussions, you're  
10:55AM 15 here today to waive certain rights and to plead guilty to  
10:55AM 16 Count 2 under the terms and conditions of the plea agreement.  
10:55AM 17 Are you fully satisfied with the advice and counsel you  
10:55AM 18 received from your lawyer in this matter?

10:55AM 19 THE DEFENDANT: Yes.

10:55AM 20 THE COURT: Any complaints?

10:55AM 21 THE DEFENDANT: No.

10:55AM 22 THE COURT: All right. Let's proceed to the plea  
10:55AM 23 agreement.

10:55AM 24 MR. MURRAY: Yes, Your Honor. The defendant, Daniel  
10:56AM 25 Villafane-Lozada and the United States Attorney for the

10:56AM 1 Western District of New York, hereinafter the government,  
10:56AM 2 hereby enter into a plea agreement with the terms and  
10:56AM 3 conditions as set out below.

10:56AM 4 Paragraph 1. The defendant agrees to plead guilty to  
10:56AM 5 Count 2 of the indictment, charging a violation of Title 18,  
10:56AM 6 United States Code, Sections 2252A(a)(5)(B) and 2252A(b)(2),  
10:56AM 7 possession of child pornography involving a prepubescent  
10:56AM 8 minor, for which the maximum possible sentence is a term of  
10:56AM 9 imprisonment of 20 years, a fine of \$250,000, a mandatory \$100  
10:56AM 10 special assessment and a term of supervised release of at  
10:56AM 11 least five years and up to life. The defendant understands  
10:56AM 12 that the penalties set forth in this paragraph are the maximum  
10:56AM 13 penalties that can be imposed by the Court at sentencing.

10:56AM 14 THE COURT: Do you understand that, sir?

10:56AM 15 THE DEFENDANT: Yes.

10:56AM 16 THE COURT: Did you explain to him the importance of  
10:56AM 17 this paragraph?

10:56AM 18 MR. BAGLEY: Yes, Judge.

10:56AM 19 THE COURT: What is the importance, Mr. Murray, of  
10:57AM 20 this paragraph?

10:57AM 21 MR. MURRAY: Yes, Judge. Paragraph 1 satisfies a  
10:57AM 22 requirement of Rule 11 by notifying the defendant of the  
10:57AM 23 maximum penalty. The Court also must consider but is not  
10:57AM 24 bound by the Federal Sentencing Guidelines. The sentencing  
10:57AM 25 guidelines went into effect on November 1st, 1987 and are

1 relevant to federal offenses committed after that date. The  
2 purpose of the sentencing guidelines is to establish a  
3 sentencing system in which Courts will impose similar  
4 sentences for similar crimes upon defendants who are similar  
5 in ways that, according to the guidelines, are relevant to  
6 sentencing.

7 If the sentencing guidelines procedure is followed,  
8 the Court would impose a sentence within a range on a  
9 sentencing table in the sentencing guidelines manual. This  
10 range would depend on the defendant's criminal conduct and the  
11 defendant's criminal history. The law requires the Court to  
12 consider imposing the sentence in accordance with the  
13 sentencing guideline procedure. The law permits the Court,  
14 however, to impose a reasonable sentence without adhering to  
15 the sentencing guidelines. Sentencing guidelines are  
16 advisory.

17 THE COURT: Do you understand that, sir, so far? Do  
18 you understand everything he said?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay.

21 MR. MURRAY: Paragraph 2. The defendant understands  
22 that unless the defendant is indigent, the Court must impose a  
23 special assessment of \$5,000 for the offense of conviction  
24 pursuant to Title 18, United States Code, Section 3014, in  
25 addition to the assessment imposed under 18 U.S.C.

10:58AM 1 Section 3013.

10:58AM 2 Paragraph 3. The defendant acknowledges that  
10:58AM 3 pursuant to Title 18, United States Code, Section 2259A, the  
10:58AM 4 Court must order restitution for the full amount of the  
10:58AM 5 victim's compensable losses up to \$50,000, as determined by  
10:58AM 6 the Court. The defendant understands the defendant will not  
10:58AM 7 be entitled to withdraw the pleas of guilty based upon any  
10:58AM 8 restitution amount ordered by the Court.

10:58AM 9 Paragraph 4. The defendant understands that if it's  
10:58AM 10 determined that the defendant has violated any of the terms or  
10:59AM 11 conditions of supervised release, the defendant may be  
10:59AM 12 required to serve in prison all or part of the term of  
10:59AM 13 supervised release, up to two years, without credit for time  
10:59AM 14 previously served on supervised release.

10:59AM 15 And if the defendant commits any criminal offense  
10:59AM 16 under Chapter 109A, 110 or 117 or Sections 1201 or 1591 of  
10:59AM 17 Title 18, United States Code, for which imprisonment for a  
10:59AM 18 term longer than one year can be imposed, the defendant shall  
10:59AM 19 be sentenced to a term of imprisonment of not less than five  
10:59AM 20 years and up to life.

10:59AM 21 As a consequence, in the event the defendant is  
10:59AM 22 sentenced to the maximum term of incarceration, a prison term  
10:59AM 23 imposed for a violation of supervised release may result in  
10:59AM 24 the defendant serving a sense of imprisonment longer than the  
10:59AM 25 statutory maximum set forth in paragraph 1 of this agreement.

10:59AM 1 Paragraph 5.

10:59AM 2 THE COURT: Just one second. What are these chapters  
11:00AM 3 109A, 110, 117, 1201, 1591 of Title 18? What are they all  
11:00AM 4 about?

11:00AM 5 MR. MURRAY: Yes, Your Honor. Chapter 109A relates  
11:00AM 6 to sexual abuse offenses. Chapter 110 relates to sexual  
11:00AM 7 exploitation and other abuse of children. Chapter 117 relates  
11:00AM 8 to the transportation for illegal sexual activity. Turning to  
11:00AM 9 18 U.S.C. Section 1201, that refers to kidnapping. And then  
11:00AM 10 Title 18 U.S.C. 1591, that involves the sex trafficking of  
11:00AM 11 children.

11:00AM 12 THE COURT: Do you understand all that, sir?

11:00AM 13 THE DEFENDANT: Yes.

11:00AM 14 THE COURT: Did you explain to him this?

11:00AM 15 MR. BAGLEY: Yes, Judge.

11:00AM 16 THE COURT: Okay.

11:00AM 17 MR. MURRAY: Paragraph 5. The defendant has been  
11:00AM 18 advised and understands that under the Sex Offender  
11:00AM 19 Registration and Notification Act, the defendant must register  
11:00AM 20 and keep registration current in all of the following  
11:01AM 21 jurisdictions; where the defendant resides, where the  
11:01AM 22 defendant is employed and where the defendant is a student.

11:01AM 23 The defendant understands that requirements for  
11:01AM 24 registration include providing the defendant's name, residence  
11:01AM 25 address and the names and addresses of any place where the

1 defendant is or will be an employee or student, among other  
2 information. The defendant further understands that the  
3 requirement to keep the registration current includes  
4 informing at least one jurisdiction in which the defendant  
5 resides, is an employee or is a student not later than three  
6 business days after any change of the defendant's name,  
7 residence, employment or student status.

8                 The defendant has been advised and understands that  
9 failure to comply with these obligations subjects the  
10 defendant to prosecution for failure to register under federal  
11 law, Title 18, United States Code, Section 2250, which is  
12 punishable by imprisonment, a fine or both.

13                 Turning to paragraph 6. The defendant acknowledges  
14 that a conviction in this action may result in the defendant's  
15 civil commitment, pursuant to 18 U.S.C. 4248, as a sexually  
16 dangerous person. The defendant understands that a  
17 determination as to whether the defendant will be subject to  
18 civil commitment will be made initially by the Attorney  
19 General or the Director of the Bureau of Prisons at the  
20 conclusion of the defendant's term of imprisonment and that  
21 the Court will make the final determination in a separate  
22 proceeding.

23                 Paragraph 7. The defendant --

24                 THE COURT: Do you understand everything so far?

25                 THE DEFENDANT: Yes.

11:02AM 1 THE COURT: Okay.

11:02AM 2 MR. MURRAY: Paragraph 7. The defendant understands  
11:02AM 3 the nature of the offense set forth in paragraph 1 of this  
11:02AM 4 agreement and understands that if this case proceeded to  
11:02AM 5 trial, the government would be required to prove beyond a  
11:02AM 6 reasonable doubt the following elements of the crime:

11:02AM 7 A. The defendant knowingly possessed material that  
11:02AM 8 contained an image of child pornography as defined in Title  
11:03AM 9 18, United States Code, Section 2256A;

11:03AM 10 B. That such child pornography had been mailed,  
11:03AM 11 shipped or transported in or affecting interstate or foreign  
11:03AM 12 commerce by any means, including by computer, or is produced  
11:03AM 13 using materials that had been mailed, shipped or transported  
11:03AM 14 in or affecting interstate or foreign commerce by any means,  
11:03AM 15 including by computer;

11:03AM 16 C. The defendant knew that such material contained  
11:03AM 17 child pornography;

11:03AM 18 And D. At least one of the child pornography images  
11:03AM 19 depicted a prepubescent minor or a minor or under 12 years  
11:03AM 20 old.

11:03AM 21 Paragraph 8. The defendant and the government agree  
11:03AM 22 to the following facts, which form the basis for the entry of  
11:03AM 23 the plea of guilty, including relevant conduct.

11:03AM 24 THE COURT: Do you understand everything so far?

11:03AM 25 THE DEFENDANT: Yes.

11:03AM 1 THE COURT: Okay.

11:03AM 2 MR. MURRAY: A. On or about April 19th, 2018, the  
11:04AM 3 defendant, Daniel Villafane-Lozada, in the Western District of  
11:04AM 4 New York, knowingly possessed material containing images and  
11:04AM 5 videos of child pornography as defined in Title 18,  
11:04AM 6 United States Code, Section 2256A. The images and videos were  
11:04AM 7 stored on a Toshiba microSD memory card, which was  
11:04AM 8 manufactured outside of New York State. The images also had  
11:04AM 9 been transmitted in interstate and foreign commerce via the  
11:04AM 10 internet.

11:04AM 11 B. On or about April 19, 2018, HSI and the New York  
11:04AM 12 State Police executed a search warrant at the defendant's  
11:04AM 13 residence and interviewed the defendant. During that  
11:04AM 14 interview, the defendant admitted that he viewed child  
11:04AM 15 pornography and that child pornography would be found on his  
11:04AM 16 Toshiba microSD memory card, which was seized and found to  
11:04AM 17 contain 30 videos and 22 images of child pornography.

11:04AM 18 C. Some of the child pornography possessed by the  
11:04AM 19 defendant depicted prepubescent minors or minors who had not  
11:05AM 20 attained 12 years of age.

11:05AM 21 D. Some of the child pornography possessed by the  
11:05AM 22 defendant contained sexual abuse or exploitation of an infant  
11:05AM 23 or a toddler or depictions of violence.

11:05AM 24 E. At the time the defendant possessed the images  
11:05AM 25 and videos, he knew that they depicted minors engaging in

11:05AM 1 sexually explicit conduct.

11:05AM 2 F. As part of the relevant conduct for the offense,  
11:05AM 3 on or about May 3rd, 2018, the defendant admitted, during a  
11:05AM 4 polygraph examination, to engaging in sexual contact with two  
11:05AM 5 minor victims under the age of 18; hereinafter minor victim 1  
11:05AM 6 and minor victim 2. The defendant admitted that between on or  
11:05AM 7 about November 2016 and on or about January 2017 the defendant  
11:05AM 8 engaged in anal and oral sexual contact with minor victim 1.  
11:05AM 9 The defendant also admitted that between 2014 and 2015, the  
11:05AM 10 defendant engaged in oral sexual contact with minor victim 2.

11:06AM 11 Paragraph --

11:06AM 12 THE COURT: I'm sorry. Where are you? What did you  
11:06AM 13 just read, the last thing you just read?

11:06AM 14 MR. MURRAY: Your Honor, it was F, at the very top of  
11:06AM 15 page 5.

11:06AM 16 THE COURT: Okay. How would you prove all of this?

11:06AM 17 MR. MURRAY: Yes, Your Honor. If this case proceeded  
11:06AM 18 to a contested trial, the government would first call Homeland  
11:06AM 19 Security Investigation Agent Justin Burnham. Agent Burnham  
11:06AM 20 will testify that after receiving a cyber tip from the  
11:06AM 21 National Center for Missing and Exploited Children, which  
11:06AM 22 revealed that a particular email address linked to a  
11:06AM 23 particular physical address was associated with uploading an  
11:06AM 24 image of child pornography. Agent Burnham and the New York  
11:06AM 25 State Police thereafter executed a search warrant at 138 Angle

11:06AM 1 Road, West Seneca, New York 14224.

11:06AM 2 Agent Burnham will testify that on or about April 19,  
11:06AM 3 2018, he encountered the defendant while in the process of  
11:06AM 4 executing this search warrant with the New York State Police,  
11:06AM 5 all in the Western District of New York. At that time, during  
11:06AM 6 the search warrant execution, the defendant admitted to Agent  
11:07AM 7 Burnham that he possessed child pornography and that he had a  
11:07AM 8 Toshiba microSD memory card that contained child pornography.

11:07AM 9 The defendant then led Agent Burnham to the location  
11:07AM 10 where he kept the Toshiba microSD memory card and provided the  
11:07AM 11 memory card to Agent Burnham. Agent Burnham will testify that  
11:07AM 12 the Toshiba microSD memory card was manufactured outside of  
11:07AM 13 New York State and the defendant admitted that he used the  
11:07AM 14 internet to obtain the child pornography. Agent Burnham will  
11:07AM 15 testify that the Toshiba microSD memory card contained  
11:07AM 16 approximately 22 images and 30 videos depicting child  
11:07AM 17 pornography and he will lay the foundation for those images  
11:07AM 18 and videos at the time of trial.

11:07AM 19 In particular, Agent Burnham will testify that, based  
11:07AM 20 on his training and experience, at least one of the images  
11:07AM 21 depicts a minor victim under the age of 12 years of age  
11:07AM 22 engaging in sexually explicit conduct. Additionally, based on  
11:08AM 23 his training and experience, Agent Burnham will testify that  
11:08AM 24 some of the child pornography possessed by the defendant  
11:08AM 25 contained sexual abuse or exploitation of an infant or

11:08AM 1 toddler.

11:08AM 2 Additionally, if we proceeded to trial, the  
11:08AM 3 government would call the two victims to testify regarding the  
11:08AM 4 defendant engaging in sexual contact with their person.  
11:08AM 5 Specifically, the government would call minor victim 1, who  
11:08AM 6 will testify that the defendant met minor victim 1 on a social  
11:08AM 7 media application, Grinder and thereafter communicated with  
11:08AM 8 him via a TextNow application to arrange an in-person. Minor  
11:08AM 9 victim 1, who was 15 years old at the time, thereafter engaged  
11:08AM 10 in anal and oral sexual contact with the defendant in the  
11:08AM 11 Western District of New York between on or about November 2016  
11:08AM 12 to January of 2017 and that's what minor victim 1 will testify  
11:08AM 13 to.

11:08AM 14 Additionally, the government will call minor victim  
11:08AM 15 2, who would testify the defendant met minor victim 2 through  
11:08AM 16 an advertisement on Craig's List -- I'm sorry, will testify  
11:08AM 17 that the defendant met minor victim 2 through an advertisement  
11:09AM 18 on Craig's List and that minor victim 2, who was 14 years old  
11:09AM 19 at the time, engaged in oral sexual conduct with the defendant  
11:09AM 20 in the Western District of New York between 2014 and 2015.

11:09AM 21 THE COURT: Do you understand all that, sir?

11:09AM 22 THE DEFENDANT: Yes.

11:09AM 23 MR. MURRAY: Paragraph 9. The defendant understands  
11:09AM 24 that the Court must consider but is not bound by the  
11:09AM 25 sentencing guidelines.

11:09AM 1 Paragraph 10. The government and the defendant agree  
11:09AM 2 that Guideline 2G2.2(a)(1) applies to the offense of  
11:09AM 3 conviction and provides for a base offense level of 18.

11:09AM 4 Paragraph 11. The government and the defendant agree  
11:09AM 5 that the following specific offense characteristics do apply:

11:09AM 6 A. The two-level increase, pursuant to  
11:09AM 7 Guideline 2G2.2(b)(2), material involved a prepubescent minor  
11:09AM 8 or a minor under the age of 12 years;

11:09AM 9 B. The four-level increase, pursuant to  
11:09AM 10 Guideline 2G2.2(b)(4), offense involved material that  
11:10AM 11 portrayed sexual abuse or exploitation of an infant or  
11:10AM 12 toddler;

11:10AM 13 C. The five-level increase, pursuant to Guideline  
11:10AM 14 Section 2G2.2(b)(5), the defendant engaged in a pattern of  
11:10AM 15 activity involving the sexual abuse or exploitation of a  
11:10AM 16 minor;

11:10AM 17 D. The two-level increase, pursuant to Guideline  
11:10AM 18 Section 2G2.2(b)(6), offense involved use of a computer;

11:10AM 19 And E. The five-level increase, pursuant to  
11:10AM 20 Guideline Section 2G2.2(b)(7)(D), offense involved 600 or more  
11:10AM 21 images.

11:10AM 22 Paragraph 12 --

11:10AM 23 THE COURT: Just one second. Do you understand all  
11:10AM 24 this so far, sir?

11:10AM 25 THE DEFENDANT: Yes.

11:10AM 1 THE COURT: Mr. Bagley, you've gone over these  
11:10AM 2 guidelines and these numbers with him?

11:10AM 3 MR. BAGLEY: Yes, Judge.

11:10AM 4 THE COURT: And he understands them?

11:10AM 5 MR. BAGLEY: Yes.

11:10AM 6 THE COURT: Now, you saw this table with all these  
11:10AM 7 numbers on it, right?

11:10AM 8 THE DEFENDANT: Yes.

11:10AM 9 THE COURT: This is important. You're going to end  
11:10AM 10 up on this table. And where you end up, that's a range of  
11:10AM 11 months that are being recommended to the Court as to what the  
11:10AM 12 sentence should be. I'm not bound by it, but I'm going to  
11:11AM 13 carefully consider it. You want to end up as far to the top  
11:11AM 14 of this table as you can and as far away from the bottom.  
11:11AM 15 Because as you get down, those numbers, they get pretty high.

11:11AM 16 Do you understand that, sir?

11:11AM 17 THE DEFENDANT: Yes.

11:11AM 18 THE COURT: So, based on the calculations you have so  
11:11AM 19 far, we're at a sentencing level of eight -- well, wait a  
11:11AM 20 minute. We're at 36, right?

11:11AM 21 MR. MURRAY: That's correct, Your Honor. Yes.

11:11AM 22 THE COURT: Yeah. So, we started off with 18. Then  
11:11AM 23 we had all these additions. These are all factors that boost  
11:11AM 24 the number up.

11:11AM 25 Now, the next factor is paragraph 13, which talks

11:11AM 1 about acceptance of responsibility. And what that provision  
11:11AM 2 says, if you're guilty of the offense -- and if you're not  
11:11AM 3 guilty, you have no business being here -- but if you are  
11:11AM 4 guilty of the offense and you're willing to accept  
11:11AM 5 responsibility for the offense, then you can get a reduction  
11:11AM 6 of three levels.

11:11AM 7           And if you look at 36 at the high end versus 33 at  
11:12AM 8 the low end, you can see there's quite a bit of difference  
11:12AM 9 there. No guarantee you'll get the lower end, but it gives  
11:12AM 10 you and your lawyer a chance to argue for a lower sentence.  
11:12AM 11 If you went to trial and if you were convicted, in all  
11:12AM 12 likelihood, you would not get this three-level reduction. Do  
11:12AM 13 you understand that, sir?

11:12AM 14           THE DEFENDANT: Yes.

11:12AM 15           THE COURT: The theory being, you save the government  
11:12AM 16 the time and expense of a trial, you should get a lower  
11:12AM 17 number. Do you understand that?

11:12AM 18           THE DEFENDANT: Yes.

11:12AM 19           THE COURT: Okay.

11:12AM 20           MR. MURRAY: Paragraph 12. Based on the foregoing,  
11:12AM 21 it is the understanding of the government and the defendant  
11:12AM 22 that the adjusted offense level for the offense of conviction  
11:12AM 23 is 36.

11:12AM 24           Paragraph 13. At sentencing, the government agrees  
11:12AM 25 not to oppose the recommendation --

11:12AM 1 THE COURT: I've already gone through that.

11:12AM 2 MR. MURRAY: I apologize, Your Honor.

11:12AM 3 Paragraph 14. It's the understanding of the

11:12AM 4 government and the defendant that the defendant's criminal

11:12AM 5 history category is I. The defendant understands that if the

11:12AM 6 defendant is sentenced for or convicted of any other charges

11:12AM 7 prior to sentencing in this action, the defendant's criminal

11:12AM 8 history category may increase. The defendant understands that

11:12AM 9 the defendant has no right to withdraw the plea of guilty

11:12AM 10 based on the Court's determination of the defendant's criminal

11:13AM 11 history category.

11:13AM 12 Paragraph 15. It's the understanding of the

11:13AM 13 government and the defendant that with a total offense level

11:13AM 14 of 33 and criminal history category of I, the defendant's

11:13AM 15 sentencing range would be a term of imprisonment of 135 to 168

11:13AM 16 months, a fine of \$35,000 to \$250,000 and a period of

11:13AM 17 supervised release of five years to life. Notwithstanding

11:13AM 18 this, the defendant understands that at sentencing, the

11:13AM 19 defendant is subject to the maximum penalties set forth in

11:13AM 20 paragraph 1 of this agreement.

11:13AM 21 Paragraph 16. The government and the defendant agree

11:13AM 22 to the correctness of the calculations of the sentencing

11:13AM 23 guidelines range set forth above. The government and the

11:13AM 24 defendant, however, reserve the right to recommend a sentence

11:13AM 25 outside the sentencing guidelines range. This paragraph

11:13AM 1 reserves the right to the government and the defendant to  
11:14AM 2 bring to the attention of the Court all information deemed  
11:14AM 3 relevant to a determination of the proper sentence in this  
11:14AM 4 action.

11:14AM 5 Paragraph 17. The defendant understands that the  
11:14AM 6 Court is not bound to accept any sentencing guidelines  
11:14AM 7 calculations and the defendant will not be entitled to  
11:14AM 8 withdraw the plea of guilty, based on the sentence imposed by  
11:14AM 9 the Court.

11:14AM 10 Paragraph 18.

11:14AM 11 THE COURT: Any reason to read Statute of  
11:14AM 12 Limitations?

11:14AM 13 MR. BAGLEY: No, Judge.

11:14AM 14 THE COURT: Government Rights and Reservations?

11:14AM 15 MR. BAGLEY: No, Judge.

11:14AM 16 THE COURT: Let's go to the next section.

11:14AM 17 MR. MURRAY: Paragraph 22. The defendant understands  
11:14AM 18 that Title 18, United States Code, Section 3742 affords the  
11:14AM 19 defendant a limited right to appeal the sentence imposed. The  
11:14AM 20 defendant, however, knowingly waives the right to appeal and  
11:14AM 21 collaterally attack any component of a sentence imposed by the  
11:14AM 22 Court which falls within or is less than the sentencing range  
11:14AM 23 for imprisonment, a fine and supervised release set forth in  
11:14AM 24 section 3, paragraph 15 above, notwithstanding the manner in  
11:14AM 25 which the Court determines the sentence. In the event of an

11:15AM 1 appeal of the defendant's sentence by the government, the  
11:15AM 2 defendant reserves the right to argue the correctness of the  
11:15AM 3 defendant's sentence.

11:15AM 4 Paragraph 23. The defendant understands that by  
11:15AM 5 agreeing not to collaterally attack the sentence, the  
11:15AM 6 defendant is waiving the right to challenge the sentence in  
11:15AM 7 the event that in the future the defendant becomes aware of  
11:15AM 8 previously unknown facts or a change in the law which the  
11:15AM 9 defendant believes would justify a decrease in the defendant's  
11:15AM 10 sentence.

11:15AM 11 Paragraph 24. The government waives its right to  
11:15AM 12 appeal any component of a sentence imposed by the Court which  
11:15AM 13 falls within or is greater than the sentencing range for  
11:15AM 14 imprisonment, a fine and supervised release set forth in  
11:15AM 15 section 3, paragraph 15 above, notwithstanding the manner in  
11:15AM 16 which the Court determines the sentence. However, in the  
11:15AM 17 event of an appeal from the defendant's sentence by the  
11:15AM 18 defendant, the government reserves the right to argue the  
11:15AM 19 correctness of the defendant's sentence.

11:15AM 20 THE COURT: Basically, this is your day in court. If  
11:15AM 21 the Court accepts the plea, you will have waived your rights.  
11:16AM 22 And if I sentence you, say, to a different higher number than  
11:16AM 23 what's set forth in the plea agreement, you would have a right  
11:16AM 24 to appeal that because you agreed to the numbers here. I'd  
11:16AM 25 have to explain why I did it. I'm not suggesting I'm going

11:16AM 1 to, but if I did, you could appeal that on the basis that the  
11:16AM 2 sentence I imposed is unreasonable. Do you understand that,  
11:16AM 3 sir?

11:16AM 4 THE DEFENDANT: Yes.

11:16AM 5 THE COURT: Just summarize the computer forfeiture.

11:16AM 6 MR. MURRAY: Yes, Your Honor. The defendant agrees  
11:16AM 7 to criminally forfeit to the United States all of the title  
11:16AM 8 and interest in the following assets; which include one Focus  
11:16AM 9 Mini computer tower bearing serial number 1712FD4914010093,  
11:16AM 10 one LG smartphone bearing serial number 602KPED0225908, one  
11:16AM 11 Toshiba hard drive bearing serial number 25NAT4BASZ69 and one  
11:17AM 12 Seagate hard drive bearing serial number 9VM9EV35 and one  
11:17AM 13 Toshiba micro 4g SD card.

11:17AM 14 Additionally, the defendant knowingly, intelligently  
11:17AM 15 and voluntarily waives his right to a jury trial on the  
11:17AM 16 forfeiture of these assets. And additionally, the defendant  
11:17AM 17 also agrees to the entry of the orders of forfeiture for the  
11:17AM 18 aforementioned assets and waives the requirements of Federal  
11:17AM 19 Rules of Criminal Procedure 32.2 and 43(a) regarding Notice of  
11:17AM 20 Forfeiture in the charging instrument, announcement of the  
11:17AM 21 forfeiture at sentencing and incorporation of the forfeiture  
11:17AM 22 in judgement.

11:17AM 23 The defendant freely, voluntarily, knowingly and  
11:17AM 24 intentionally waives any right to appeal or collaterally  
11:18AM 25 attack any manner in connection with the forfeiture of assets

11:18AM 1 as provided in this agreement.

11:18AM 2 Paragraph 31. This plea agreement represents the  
11:18AM 3 total agreement between the defendant, Daniel Villafane-Lozada  
11:18AM 4 and the government. There are no promises made by anyone,  
11:18AM 5 other than those contained in this agreement. This agreement  
11:18AM 6 supercedes any other prior agreements, written or oral,  
11:18AM 7 entered into between the government and the defendant. And  
11:18AM 8 Your Honor, it's signed today by Special Assistant United  
11:18AM 9 States Attorney Jeremy Murray on behalf of the United States  
11:18AM 10 Government for the Western District of New York.

11:18AM 11 And additionally, the last paragraph: I have read  
11:18AM 12 this agreement, which consists of 12 pages. I have had a full  
11:18AM 13 opportunity to discuss this agreement with my attorney,  
11:18AM 14 Jeffrey Bagley, Assistant Federal Public Defender. I agree  
11:18AM 15 that it represents the total agreement reached between me and  
11:18AM 16 the government. No promises or representations have been made  
11:18AM 17 to me, other than what is contained in this agreement. I  
11:18AM 18 understand all of the consequences of my plea of guilty. I  
11:19AM 19 fully agree with the contents of this agreement. I am signing  
11:19AM 20 this agreement voluntarily and of my own free will.

11:19AM 21 And Your Honor, that is signed today by the  
11:19AM 22 defendant, as well as Mr. Jeffrey Bagley, the defendant's  
11:19AM 23 attorney and it's dated today, Your honor, November 15th,  
11:19AM 24 2018.

11:19AM 25 THE COURT: Now, sir, we've gone over the agreement

11:19AM 1 in court. You indicated you understand it. You signed it,  
11:19AM 2 indicating you understand it. Your lawyer says he's gone over  
11:19AM 3 it with you and he's satisfied you understand it. Any  
11:19AM 4 questions, sir?

11:19AM 5 THE DEFENDANT: No.

11:19AM 6 THE COURT: Are these all the terms and conditions of  
11:19AM 7 the plea agreement which we just read here in court?

11:19AM 8 THE DEFENDANT: Yes.

11:19AM 9 THE COURT: No one has made any other promises to  
11:19AM 10 you, have they?

11:19AM 11 THE DEFENDANT: No.

11:19AM 12 THE COURT: How old are you, sir?

11:19AM 13 THE DEFENDANT: Twenty-three.

11:19AM 14 THE COURT: And where were you born and raised?

11:19AM 15 THE DEFENDANT: Puerto Rico.

11:19AM 16 THE COURT: When did you come to Buffalo?

11:19AM 17 THE DEFENDANT: When I was around 11 years old.

11:20AM 18 THE COURT: And what's the extent of your education?

11:20AM 19 How much schooling have you had?

11:20AM 20 THE DEFENDANT: I obtained my high school diploma.

11:20AM 21 THE COURT: Okay. And what high school did you go  
11:20AM 22 to?

11:20AM 23 THE DEFENDANT: Dunkirk Senior High School.

11:20AM 24 THE COURT: Okay. And are you married?

11:20AM 25 THE DEFENDANT: No.

11:20AM 1 THE COURT: Do you have any children?

11:20AM 2 THE DEFENDANT: No.

11:20AM 3 THE COURT: What kind of work have you done over the

11:20AM 4 years?

11:20AM 5 THE DEFENDANT: Factory work, as well as retail.

11:20AM 6 THE COURT: Okay. Are you seeing a doctor for any

11:20AM 7 reason right now?

11:20AM 8 THE DEFENDANT: No.

11:20AM 9 THE COURT: Psychiatrist?

11:20AM 10 THE DEFENDANT: Currently in the jail, I am.

11:20AM 11 THE COURT: Okay. How are you doing with that?

11:20AM 12 THE DEFENDANT: Pretty well.

11:20AM 13 THE COURT: Have you ever been hospitalized for

11:20AM 14 narcotic addiction?

11:20AM 15 THE DEFENDANT: No.

11:20AM 16 THE COURT: How are -- or today, are you right now

11:20AM 17 under the influence of any drug, medicine or alcohol?

11:20AM 18 THE DEFENDANT: No.

11:20AM 19 THE COURT: Mr. Bagley, your client appears to be

11:21AM 20 intelligent, alert, focused, clearly seems to understand

11:21AM 21 everything I'm saying; does not appear to be under the

11:21AM 22 influence of any drug, medicine or alcohol. Is that

11:21AM 23 consistent with your observations?

11:21AM 24 MR. BAGLEY: Yes, Judge, it is.

11:21AM 25 THE COURT: Now, has anyone forced you to plead

11:21AM 1 guilty?

11:21AM 2 THE DEFENDANT: No.

11:21AM 3 THE COURT: Anyone threatened you in any way?

11:21AM 4 THE DEFENDANT: No.

11:21AM 5 THE COURT: Your willingness to plead guilty, you

11:21AM 6 discussed it with your lawyer, he discussed it with the

11:21AM 7 government's lawyer. Based on those discussions, this plea

11:21AM 8 agreement was prepared and that's how this all came about, is

11:21AM 9 that true?

11:21AM 10 THE DEFENDANT: Yes.

11:21AM 11 THE COURT: Now, do you understand the offense which

11:21AM 12 you are pleading guilty to is a serious offense? And if it's

11:21AM 13 accepted by the Court, you'll be found guilty and there will

11:21AM 14 be no appeal, except as I said earlier, if I sentence higher

11:21AM 15 than what's set forth in this agreement. Do you understand

11:21AM 16 that?

11:21AM 17 THE DEFENDANT: Yes.

11:21AM 18 THE COURT: And being found guilty of this offense

11:21AM 19 may deprive you of certain rights. You may lose the right to

11:21AM 20 vote, right to hold public office, right to serve on a jury,

11:21AM 21 right to possess a firearm, certain civil labor positions like

11:22AM 22 an officer, the right to hold a firearm. Do you understand

11:22AM 23 all this, sir?

11:22AM 24 THE DEFENDANT: Yes.

11:22AM 25 THE COURT: Do you understand you have a right to

11:22AM 1 plead not guilty, which you have done up to the present time  
11:22AM 2 and you have a right to persist in that plea of not guilty and  
11:22AM 3 you have a right to a fair trial in this courtroom where a  
11:22AM 4 jury of 12 people will decide whether you're guilty or not  
11:22AM 5 guilty. First of all, I'd be the judge and to the best of my  
11:22AM 6 ability, I would conduct a trial fairly and impartially. I  
11:22AM 7 have no interest in this case, other than to make sure you and  
11:22AM 8 the government get a fair trial.

11:22AM 9           In selecting that jury, we would have in the  
11:22AM 10 courtroom somewhere around 50 to 75 people from our jury pool,  
11:22AM 11 people who live in this district. They'd be in the courtroom.  
11:22AM 12 You'd be in the courtroom. Your lawyer would be with you.  
11:22AM 13 They would all be put under oath to answer all my questions  
11:22AM 14 honestly and truthfully. If there were anyone in that group  
11:22AM 15 that would not be fair and impartial, that person would be  
11:22AM 16 removed.

11:22AM 17           And you'd have input on that through your lawyer.  
11:22AM 18 And you could say, hey, Judge, that guy has made up his mind.  
11:22AM 19 And if I agree with you -- and there's no reason why I  
11:22AM 20 wouldn't agree with you if it makes sense -- that person would  
11:22AM 21 be gone. Also, you could remove up to 10 people for any  
11:23AM 22 reason you want, other than race or gender. You couldn't say  
11:23AM 23 I don't want any women on my jury or I don't want a particular  
11:23AM 24 race of people. You can't discriminate in that sense. Do you  
11:23AM 25 understand that?

11:23AM 1 THE DEFENDANT: Yes.

11:23AM 2 THE COURT: Mr. Bagley would represent you. You'd  
11:23AM 3 have a right to hear and to see all the witnesses and to have  
11:23AM 4 him cross-examine all the witnesses. And after the government  
11:23AM 5 has rested its case, you could put on a defense. You could  
11:23AM 6 subpoena witnesses or any records that are relevant to the  
11:23AM 7 trial issues, but you don't have to do anything. You're  
11:23AM 8 presumed not guilty. You can sit there and say, you prove it,  
11:23AM 9 government, because you rely on the presumption of innocence.

11:23AM 10 Now, if you wanted to testify or subpoena records,  
11:23AM 11 you could do that. You could testify on your own behalf if you  
11:23AM 12 wanted to, but you have, as I said, you have no burden to  
11:23AM 13 prove anything. The burden is on the government to convince  
11:23AM 14 all 12 jurors that you are guilty beyond a reasonable doubt.  
11:23AM 15 Do you understand that?

11:23AM 16 THE DEFENDANT: Yes.

11:23AM 17 THE COURT: By entering a plea of guilty, if it's  
11:23AM 18 accepted by the Court, there will be no trial. You'll have  
11:23AM 19 waived your right to trial, as well as all the other rights we  
11:23AM 20 talked about. Do you understand that?

11:23AM 21 THE DEFENDANT: Yes.

11:24AM 22 THE COURT: Any questions, sir?

11:24AM 23 THE DEFENDANT: No.

11:24AM 24 THE COURT: You're doing this voluntarily, of your  
11:24AM 25 own free will? No one is forcing you to do this? You

11:24AM 1 understand all the possible consequences?

11:24AM 2 THE DEFENDANT: Yes.

11:24AM 3 THE COURT: Counsel, do you have any reason why I  
11:24AM 4 should not accept the plea?

11:24AM 5 MR. MURRAY: No, Your Honor.

11:24AM 6 MR. BAGLEY: No, Judge.

11:24AM 7 THE COURT: You're both satisfied I complied with all  
11:24AM 8 the requirements of Rule 11?

11:24AM 9 MR. MURRAY: Yes, Your Honor.

11:24AM 10 MR. BAGLEY: Yes.

11:24AM 11 THE COURT: How do you plead to Count 2; guilty or  
11:24AM 12 not guilty, sir?

11:24AM 13 THE DEFENDANT: Guilty.

11:24AM 14 THE COURT: It is the finding of the Court, the  
11:24AM 15 defendant is fully competent and capable of entering an  
11:24AM 16 informed plea. The plea of guilty is a knowing and voluntary  
11:24AM 17 plea, supported by an independent basis of fact containing  
11:24AM 18 each essential element of the offense charged. His plea is  
11:24AM 19 therefore accepted. He is now judged guilty of Count 2.

11:24AM 20 Sentencing will be scheduled for March 1st at 12:30.

11:24AM 21 A written presentence report will be prepared by the probation  
11:24AM 22 office to assist the Court in imposing sentence. You'll be  
11:24AM 23 afforded an opportunity to meet with the probation officer to  
11:24AM 24 provide information in that report. Your attorney should be  
11:24AM 25 present. You'll receive a copy of the report, as well as your

1 attorney. You'll be able to file any additional information  
2 or any motions or objections that are consistent within the  
3 terms and conditions of the plea agreement and both you and  
4 your attorney will have an opportunity to address the Court at  
5 the time of sentencing and say anything you wish to say in  
6 mitigation of the sentence. The scheduling for filing all  
7 papers will be as follows.

8 THE CLERK: The initial presentence report will be  
9 due January 15th. The statement of the parties with respect  
10 to sentencing factors and objections, if any and motions, if  
11 any, will be due February 8th. Responses to any objections or  
12 responses to any motions will be due February 15th. A  
13 sentencing memorandum and/or character letters in support of  
14 the defendant will be due February 15th. Any motions to  
15 adjourn the sentencing date will be due no later than  
16 February 19th. The final presentence report will be due  
17 February 22nd and the government's response to any legal  
18 arguments in defendant's sentencing memorandum will be due  
19 February 22nd.

20 THE COURT: All right. Anything further?

21 MR. MURRAY: No, Your Honor.

22 MR. BAGLEY: Judge, what was the sentencing date  
23 again? I'm sorry.

24 THE COURT: March 1st at 12:30. All right. Thank  
25 you.

11:26AM 1 MR. MURRAY: Thank you, Your Honor.

11:26AM 2 MR. BAGLEY: Thank you.

11:26AM

3 (Proceedings ended at 11:26 a.m.)

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3 I certify that the foregoing is a  
4 correct transcription of the proceedings  
5 recorded by me in this matter.

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9 s/ Megan E. Pelka, RPR

10 Court Reporter,

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